

BEFORE THE GROWTH MANAGEMENT HEARINGS BOARD
CENTRAL PUGET SOUND REGION
STATE OF WASHINGTON

JAMES L. HALMO,

Petitioner,

v.

PIERCE COUNTY,

Respondent,

and

HOWE INVESTMENTS II, LLC, and L 80
LLC,

Intervenors.

CASE No. 14-3-0002

(Halmo III)

FINAL DECISION AND ORDER

SYNOPSIS

James Halmo challenged Pierce County's adoption of provisions of Pierce County Ordinance No. 2013-59 providing for designation of Fisherman's Village as a Rural Neighborhood Center. Halmo asserted the designation did not meet the statutory criteria for limited areas of more intensive rural development (LAMIRDs) as set forth in RCW 36.70A.070(5)(d). Fisherman's Village property owners intervened in support of the County's action, contending that the area met the statutory criteria for a LAMIRD.

The Board determined a portion of the comprehensive plan text amendment adopted in the ordinance failed to comply with RCW 36.70A.070(5)(d). The Board found the land use map amendment did not provide a logical outer boundary compliant with the statute. Petitioner did not meet his burden of demonstrating that the community plan area

1 amendment triggered an area-wide plan review for LAMIRD compliance. Non-compliant
2 provisions of the ordinance were remanded to the County.

4 I. PROCEDURAL BACKGROUND

5 The challenged action is Pierce County's adoption of comprehensive plan
6 amendments T-2, M-6 and C-2 in Ordinance No. 2013-59. Following filing of the Petition
7 for Review (PFR) in this case, the County passed Emergency Ordinance No. 2014-13
8 delaying the effective date of the challenged provisions until October 1, 2014.

9
10 Howe Investments II, LLC, and L8, LLC (hereafter "Howe") intervened in support of
11 the County's action. The County indicated at the prehearing conference that briefing and
12 argument for Respondent would be provided solely by the Intervenors.

13 The parties subsequently filed their prehearing briefs and exhibits as follows:

- 14 • Petitioner's Prehearing Brief (April 11, 2014), with 20 exhibits;
- 15 • Intervenors' Response Brief (May 9, 2014) with 9 exhibits;
- 16 • Petitioner's Reply to Intervenors' Response Brief (May 16, 2014).

17
18 The Hearing on the Merits was convened on June 6, 2014, at the Pierce County
19 Public Services Building. Present for the Board were Margaret Pageler, presiding officer,
20 Cheryl Pflug, and Nina Carter. Petitioner James Halmo appeared *pro se*. The County
21 appeared by its attorney, M. Peter Philley, who answered questions from the Board but
22 provided no argument.¹ Intervenors appeared by their attorney Margaret Hatcher. Amanda
23 Verona provided court reporting services.

24
25 The hearing provided the Board an opportunity to ask questions clarifying important
26 facts in the case and providing better understanding of the legal arguments of the parties.

27 II. PRESUMPTION OF VALIDITY, BURDEN OF PROOF, 28 AND STANDARD OF REVIEW

29
30 Pursuant to RCW 36.70A.320(1), comprehensive plans and development regulations,

31
32 ¹ Mr. Philley explained the County's procedure for determining when to tender defense of a GMA challenge to an intervenor. The Board noted its rules make no provision for a respondent to bypass briefing and argument, citing WAC 242-03-710, but the prehearing order in this case acknowledged Pierce County's intention to rely on Howe's brief and argument. Prehearing Order and Order Granting Intervention (Feb. 25, 2014) at 2.

1 and amendments to them, are presumed valid upon adoption.² This presumption creates a
2 high threshold for challengers as the burden is on the petitioner to demonstrate that any
3 action taken by the county is not in compliance with the GMA.³

4 The Board is charged with adjudicating GMA compliance and, when necessary,
5 invalidating noncompliant plans and development regulations.⁴ The scope of the Board's
6 review is limited to determining whether a county has achieved compliance with the GMA
7 only with respect to those issues presented in a timely petition for review.⁵ The GMA
8 directs that the Board, after full consideration of the petition, shall determine whether there
9 is compliance with the requirements of the GMA.⁶ The Board shall find compliance unless
10 it determines that the county's action is clearly erroneous in view of the entire record before
11 the Board and in light of the goals and requirements of the GMA.⁷ The challenged portion
12 is clearly erroneous if the Board has a firm and definite conviction that a mistake occurred.⁸

13 In reviewing the planning decisions of cities and counties, the Board is instructed to
14 recognize "the broad range of discretion that may be exercised by counties and cities" and
15 to "grant deference to counties and cities in how they plan for growth."⁹ However, a
16 county's actions are not boundless; its actions must be consistent with the goals and
17 requirements of the GMA.¹⁰

22 ² RCW 36.70A.320(1) provides: "[Except for the shoreline element of a comprehensive plan and applicable
23 development regulations] comprehensive plans and development regulations, and amendments thereto,
24 adopted under this chapter are presumed valid upon adoption."

25 ³ RCW 36.70A.320(2) provides: "[Except when city or county is subject to a Determination of Invalidity] the
26 burden is on the petitioner to demonstrate that any action taken by a state agency, county, or city under this
27 chapter is not in compliance with the requirements of this chapter."

28 ⁴ RCW 36.70A.280; RCW 36.70A.302.

29 ⁵ RCW 36.70A.290(1).

30 ⁶ RCW 36.70A.320(3).

31 ⁷ *Id.*

32 ⁸ *City of Arlington v. CPSGMHB*, 162 Wn.2d 768, 778, 193 P.3d 1077 (2008) (Citing to *Dept. of Ecology v. PUD District No. 1 of Jefferson County*, 121 Wn.2d 179, 201, 849 P.2d 646 1993); See also, *Swinomish Tribe v. WWGMHB*, 161 Wn.2d 415, 423-24, 166 P.3d 1198 (2007); *Lewis County v. WWGMHB*, 157 Wn.2d 488, 497-98, 139 P.3d 1096 (2006).

⁹ RCW 36.70A.3201

¹⁰ *King County v. CPSGMHB*, 142 Wn.2d 543, 561, 14 P.2d 133 (2000) (Local discretion is bounded by the goals and requirements of the GMA). See also, *Swinomish*, 161 Wn.2d at 423-24. In *Swinomish*, as to the degree of deference to be granted under the clearly erroneous standard, the Supreme Court has stated: The amount [of deference] is neither unlimited nor does it approximate a rubber stamp. It requires the Board to

1 Thus, the burden is on the petitioner to overcome the presumption of validity and
2 demonstrate that the challenged action taken by the county is clearly erroneous in light of
3 the goals and requirements of the GMA.

4 5 **III. BOARD JURISDICTION**

6 The Board finds the Petition for Review was timely filed within 60 days of publication
7 of the challenged ordinance as required by RCW 36.70A.290(2). The Board finds the
8 petitioner has standing to appear before the Board, pursuant to RCW 36.70A.280(2)(b).
9 The Board finds it has jurisdiction over the subject matter of the petition pursuant to RCW
10 36.70A.280(1).
11

12 13 **IV. THE CHALLENGED ACTION AND STATEMENT OF FACTS**

14 Pierce County Ordinance No. 2013-59 enacts amendments to Pierce County's
15 comprehensive plan and development regulations adopted in the annual docketing cycle
16 for 2013.¹¹ The amendments challenged by Halmo create a Rural Neighborhood Center
17 ("RNC") designation for Fisherman's Village in the Gig Harbor Community Plan area. RNC
18 is Pierce County's land use designation for rural areas described in the GMA as "limited
19 areas of more intensive rural development" (LAMIRD) and governed by RCW 36.70A.070
20 (5)(d). To designate Fisherman's Village as a LAMIRD, the County adopted three
21 amendments – T-6, C-2, and M-6.
22

23 24 **The Challenged Amendments**

- 25 • Amendment T-2,¹² Change to Location Criteria for Rural Neighborhood Centers
26 (RNC).

27 Pierce County's comprehensive plan provisions for rural neighborhood centers
28 specify that RNCs serve the everyday needs of local rural residents with "limited
29 convenience shopping and services." PCC 19A.30.060 B.1; 19A.40.060 G.1 and H. They
30

31 give the [jurisdiction's] actions a "critical review" and is a "more intense standard of review" than the arbitrary
32 and capricious standard. *Id.* at 435, n. 8.

¹¹ The more-comprehensive periodic review and update required by the GMA is due December 1, 2015, for
Pierce County. RCW 36.70A.130(5)(a).

¹² "T" indicates a comprehensive plan text amendment.

1 should be limited to no more than ten acres except where otherwise specified in a
2 community plan. PCC 19A.30.060 B.2; 19A.40.060 I. New RNCs should be more than two
3 miles from an existing RNC or urban growth area boundary. PCC 19A.40.060 G.3 and 4.
4 Strip commercial development “shall be discouraged.” PCC 19A.40.060 I.1.

5 Amendment T-2 adds three new sections allowing recognition of “isolated areas of
6 commercial/business park development:”
7

8 PCC 19A.30.060 B.4. Recognize isolated areas of commercial/business
9 park development which were approved or had existing uses or areas of
10 higher intensity use on or before July 1, 1990, and were not identified as an
11 RNC in a community plan as of January 2012. The size of the area and
12 “logical outer boundaries,” as defined by the LAMIRD criteria, should be
13 established by amendment to a community plan and an area-wide map
14 amendment.

15 PCC 19A.40.060 G.5 Recognize isolated areas of commercial/business
16 park development identified in PCC 19A.30.060 B.4.

17 PCC 19A.40.060 I.2. The size and logical outer boundaries of isolated areas
18 of commercial/business park development identified in PCCA.30.060 B.4
19 shall be determined in the community plan by Comprehensive Plan
20 amendment.

- 21 • Amendment C-2,¹³ Additional RNC, South Gig Harbor area.

22 C-2 amends the Gig Harbor Community Plan¹⁴ by adding the underlined text:

23 **Objective 6: Rural Neighborhood Centers.** Those historic community
24 centers located at Arletta, Rosedale and Fox Island are recognized as
25 important civic and commercial focal points in the rural area. Limited
26 opportunities for continued commercial and civic land use shall be provided
27 in these locations. Rural Neighborhood Centers (RNCs) shall retain the
28 architectural characteristics that have historically been associated with these
29 centers.
30

31 ¹³ “C” indicates amendment of a community plan.

32 ¹⁴ Pierce County has adopted several rural sub-area plans into its comprehensive plan. Not all of rural Pierce County is governed by sub-area plans. See, generally, *Friends of Pierce County v. Pierce County*, GMHB Case No. 12-3-0002c, Final Decision and Order (July 9, 2012), at 8-9, “Prefatory Note on Pierce County Community Plans.”

1 Recognize the area northwest of SR-16/24th Street NW interchange
2 commonly known as the Fisherman's Village area as an isolated area of
3 commercial/business park as provided for in the Comprehensive Plan.

4 Principle 1. [Recognizing Arletta, Rosedale and Fox Island] ...

5 6.1.2 ...Under no circumstances shall a RNC exceed five acres in size.

6 Principle 2. [strict limits on the intensity of commercial and civic uses in
7 Gig Harbor Peninsula RNCs.]

8 Principle 3. Recognize the area northwest of SR-16/24th Street
9 interchange commonly known as the Fisherman's Village area as an
10 isolated area of commercial/business park as provided for in the
11 Comprehensive Plan.

12 Standards

13 6.3.1 The area will be designated as RNC to establish allowable uses
14 only.

15 6.3.2 The area northwest of SR-16/24th Street NW interchange
16 commonly known as the Fisherman's Village area is comprised of a
17 total of 16 acres. No further expansion of the Fisherman's Village
18 isolated area of commercial/business park development shall be
19 allowed.

20 6.3.3 Infill development of the vacant and undeveloped parcels of
21 Fisherman's Village isolated area of commercial/business park shall be
22 limited to the permitted uses of the RNC designation.

- 23 • Amendment M-6,¹⁵ Rural 10 to Rural Neighborhood Center, Fisherman's Village,
24 South Gig Harbor areas.

25 M-6 amends the County's land use map to change the Fisherman's Village parcels
26 from R-10 rural ten-acre designation to RNC Rural Neighborhood Center.
27

28 **Statement of Facts and Development History**

29 The 16-acre Fisherman's Village area is now largely built out with commercial uses.
30 Only three parcels totaling 5.28 acres are not already commercially developed. From north
31
32

¹⁵ "M" indicates amendment of the land use map.

to south, the Fisherman's Village parcels, size, development history and present use are as follows:¹⁶

Parcel #	Acres	Development history	Present use
0221282010	1.89	Single family residence 1975	Vacant, uninhabitable
0221282015	1.78	Two 10,000 sq.ft. buildings 1987	Commercial use, auto related and gym (Howe Investments)
0221282029	1.56	Vacant	Vacant (Howe Investments)
0221282028	0.29	Warehouse/office 1973	Chemical manufacturing (Howe)
0221282017	1.83	Vacant	Vacant (L 80 LLC)
0221282039	9.15	8 commercial buildings built 1992-1995	Office and business uses

SR-16 and its toll plaza lie to the east of Fisherman's Village. There is a mobile home park on the south, developed in the 1970s. Jahn's Road is to the west, bordered by a greenbelt backed by residential subdivisions. To the north is a development of townhomes. Fisherman's Village has access to Jahn's Road and from there south around the mobile home park to the SR-16 intersection at 24th Street NW.¹⁷

The County staff report documents the chronology of Fisherman's Village development and the previous zoning on which it was based.¹⁸ In 1975 Pierce County adopted a pre-GMA Gig Harbor Peninsula Community Plan designating the South Harbor area "Urban Environment" and providing for "high intensity land uses served by high volume arterials."¹⁹

During the 1970s an office building was built on one small parcel – Parcel # 0221282028, 0.29 acres – currently a chemical manufacturing operation. During the 1980s Howe built two commercial buildings on a larger lot – Parcel # 0221282015, 1.78 acres – currently housing car services and a gym. As of July 1990, these three commercial

¹⁶ PC # 14-1, Staff Report and Draft Supplemental Environmental Impact Statement, July 19, 2013, p. 11; PCC # 15, Halmo Comments (Sept. 16, 2013), p. 4-5 and attached Assessor's reports.

¹⁷ PCC 14-1, Staff Report, pp. 11, 20.

¹⁸ PC # 14-1, Staff Report, p. 11-15.

¹⁹ PC #14-1 Staff Report, p. 11-12.

1 buildings and a single family residence on the north lot – Parcel # 0221282010, 1.89 acres
2 – were the only structures in the Fisherman’s Village area.²⁰

3 The GMA was enacted in 1990 and Pierce County adopted its first comprehensive
4 plan under the GMA in 1994. Until then, the Urban Environment designation applied. In 1989
5 the Pierce County hearing examiner had issued site plan approval for Gateway Point, eight
6 retail buildings totaling 60,992 square feet on the large south lot – Parcel # 0221282039,
7 9.15 acres.²¹ Gateway Point’s first permit was applied for November 11, 1991, and Building
8 A completed August 4, 1992.²²

10 Pierce County’s 1994 GMA comprehensive plan designated the South Gig Harbor
11 area Reserve 5. The following year, the county upzoned the Tacoma Airport and South
12 Harbor area, including the Fisherman’s Village properties, to RAC – Rural Activity Center –
13 allowing more intensive commercial uses. In *City of Gig Harbor v. Pierce County*,²³ the
14 Board found the RAC designation failed to comply with the GMA because it “usurped the
15 community center functions of incorporated areas located so nearby.” The Board ruled that
16 facilitating commercial growth just outside the UGA violates growth management. Unless
17 the commercial uses by their nature are dependent upon being located in a rural area, the
18 plan results in sprawl. On remand, the County restored the Reserve 5 zoning for the South
19 Gig Harbor area.²⁴ The County amended its locational criteria for RNC designation to state:
20 “No Rural Neighborhood Center should be located within one-half mile of an urban
21 commercial or industrial land use designation.”²⁵ By this time (1996) all eight Gateway
22 Point buildings had been completed.

25 In 1997 the Legislature amended the GMA rural area provisions, creating specific
26 criteria for County recognition of rural areas developed more intensively prior to enactment
27

28
29 ²⁰ *Id.*

30 ²¹ PCC # 14, Staff Report, p. 12, referencing Pierce County Hearing Examiner Nov. 10, 1989 Site Plan Review
31 16-89.

32 ²² PCC # 14, Staff Report, p. 11, 18.

²³ *City of Gig Harbor v. Pierce County*, CPSGMHB Case No.95-3-0016, Final Decision and Order (Oct. 31,
1995), p. 52.

²⁴ CPSGMHB Case No. 95-3-0016, Order Finding Compliance (May 20, 1996).

²⁵ PCC 19A.30.060 G.4, see PCC # 14, Staff Report, p. 13.

1 of the GMA.²⁶ The new criteria referenced July 1, 1990, as the date by which to measure
2 “existing areas or existing uses.” RCW 36.70A.070(5)(d)(v). In response, Pierce County
3 amended its RNC policies but did not revisit its prior RNC designations. The revised
4 policies established a two-mile minimum distance between a LAMIRD and UGA boundary
5 and a LAMIRD maximum size of ten acres.²⁷

6
7 In 2001 the County adopted the Gig Harbor Peninsula Community Plan. In the
8 Community Plan, R-10 designation was applied to the Fisherman’s Village area, allowing
9 one residence in ten acres. By this time, however, all but 5.28 acres of the 16-acre
10 Fisherman’s Village had been developed for commercial uses under the pre-GMA Urban
11 Environment designation.

12 13 V. LEGAL ISSUES

14 The petition for review raises two questions:

- 15 • Does the County’s adoption of Amendments T-2, C-2, and M-6 providing the
16 RNC designation for Fisherman’s Village trigger an obligation for comprehensive
17 review of the LAMIRDs in the Gig Harbor Peninsula Community Plan area?
18 (Legal Issue 1)
- 19 • Does RNC designation for Fisherman’s Village as provided in Amendments T-2,
20 C-2, and M-6 comply with the LAMIRD requirements of RCW 36.70A.070(5)(d)?
21 (Legal Issue 2)

22 The Board addresses the LAMIRD criteria first, then the question of comprehensive review.

23 24 A. Compliance with LAMIRD Requirements

25 The prehearing order sets forth Legal Issue 2 as follows:

- 26
27 2. Did Pierce County in adopting the amendments to its Comprehensive
28 Plan [T-2, C-2, M-6], 1) fail to follow the LAMIRD criteria as established in
29 RCW 36.70A.070(5) and as outlined in procedural guidance WAC 365-196-
30 425(6) in delineating boundaries for a RNC in the Gig Harbor Peninsula
31 Community Plan area, and 2) fail to establish policies to minimize and
32 contain commercial development outside the urban growth area contrary to
RCW 36.70A.020(2) and RCW 36.70A.070(5)?

²⁶ Laws of 1997, ch. 429, §§ 3, 7; RCW 36.70A.070(5)(d).

²⁷ PCC 19A.40.060 G and I, cited at PCC # 14, Staff Report, p. 14-15.

1 **Applicable Law**

2 **GMA Planning Goal 2 – RCW 36.70A.020(2)** provides: “Reduce sprawl. Reduce
3 the inappropriate conversion of undeveloped land into sprawling, low-density
4 development.” Goal 2 is fleshed out in the Act’s specifications concerning planning for rural
5 lands. The rural element of a county plan “shall include measures that apply to rural
6 development and protect the rural character of the area . . . by (i) containing or otherwise
7 controlling rural development ... (iii) reducing the inappropriate conversion of undeveloped
8 land into sprawling, low density development in the rural area...” RCW 36.70A.070(5)(c).
9 “Rural character” is defined as “patterns of land use and development ... (e) that reduce
10 the inappropriate conversion of undeveloped land into sprawling, low-density
11 development. . . .” RCW 36.70A.030(15).

12
13 In this context, the GMA allows recognition of “limited areas of more intensive rural
14 development” – LAMIRDs – under the following provisions:
15

16 **RCW 36.70A.070(5)(d)**
17

18 (d) Limited areas of more intensive rural development. Subject to the
19 requirements of this subsection and except as otherwise specifically
20 provided in this subsection (5)(d), the rural element may allow for limited
21 areas of more intensive rural development, including necessary public
22 facilities and public services to serve the limited area as follows:

23 (i) Rural development consisting of the infill, development, or
24 redevelopment of existing commercial, industrial, residential, or mixed-use
25 areas, whether characterized as shoreline development, villages, hamlets,
26 rural activity centers, or crossroads developments.

27 (A) A commercial, industrial, residential, shoreline, or mixed-use area
28 shall be subject to the requirements of (d)(iv) of this subsection, but shall not
29 be subject to the requirements of (c)(ii) and (iii) of this subsection.

30 (B) Any development or redevelopment other than an industrial area or
31 an industrial use within a mixed-use area or an industrial area under this
32 subsection (5)(d)(i) must be principally designed to serve the existing and
projected rural population.

1 (C) Any development or redevelopment in terms of building size, scale,
2 use, or intensity shall be consistent with the character of the existing areas.
3 Development and redevelopment may include changes in use from vacant
4 land or a previously existing use so long as the new use conforms to the
5 requirements of this subsection (5);

6 (ii) The intensification of development on lots containing, or new
7 development of, small-scale recreational or tourist uses, including
8 commercial facilities to serve those recreational or tourist uses, that rely on
9 a rural location and setting, but that do not include new residential
10 development. A small-scale recreation or tourist use is not required to be
11 principally designed to serve the existing and projected rural population.
12 Public services and public facilities shall be limited to those necessary to
13 serve the recreation or tourist use and shall be provided in a manner that
14 does not permit low-density sprawl;

15 (iii) The intensification of development on lots containing isolated
16 nonresidential uses or new development of isolated cottage industries and
17 isolated small-scale businesses that are not principally designed to serve
18 the existing and projected rural population and nonresidential uses, but do
19 provide job opportunities for rural residents. Rural counties may allow the
20 expansion of small-scale businesses as long as those small-scale
21 businesses conform with the rural character of the area as defined by the
22 local government according to RCW 36.70A.030(15). Rural counties may
23 also allow new small-scale businesses to utilize a site previously occupied
24 by an existing business as long as the new small-scale business conforms
25 to the rural character of the area as defined by the local government
26 according to RCW 36.70A.030(15). Public services and public facilities shall
27 be limited to those necessary to serve the isolated nonresidential use and
28 shall be provided in a manner that does not permit low-density sprawl;

29 (iv) A county shall adopt measures to minimize and contain the existing
30 areas or uses of more intensive rural development, as appropriate,
31 authorized under this subsection. Lands included in such existing areas or
32 uses shall not extend beyond the logical outer boundary of the existing area
or use, thereby allowing a new pattern of low-density sprawl. Existing areas
are those that are clearly identifiable and contained and where there is a
logical boundary delineated predominately by the built environment, but that
may also include undeveloped lands if limited as provided in this subsection.
The county shall establish the logical outer boundary of an area of more
intensive rural development. In establishing the logical outer boundary, the
county shall address (A) the need to preserve the character of existing
natural neighborhoods and communities, (B) physical boundaries, such as

bodies of water, streets and highways, and land forms and contours, (C) the prevention of abnormally irregular boundaries, and (D) the ability to provide public facilities and public services in a manner that does not permit low-density sprawl;

(v) For purposes of (d) of this subsection, an existing area or existing use is one that was in existence:

(A) On July 1, 1990, in a county that was initially required to plan under all of the provisions of this chapter. . . .

The guidelines adopted by the Department of Commerce to assist local governments in compliance with the LAMIRD requirements are found at WAC 365-196-425(6), provided as an attachment to this order. Although the Commerce guidelines are not mandates for cities and counties, the Board is required to consider them in its decisions.²⁸

Positions of the Parties

Petitioner Halmo asserts the Fisherman's Village RNC violates GMA LAMIRD requirements, first, by not properly basing the designation on "an existing area or existing use that was in existence in 1990."²⁹ Halmo argues the "logical outer boundary" is not based on "the built environment" as of 1990. The County's amended language, recognizing uses "on or before" 1990 and including "approved" development, violates the requirements of RCW 36.70A.070(5)(d)(iv), according to Halmo.

Further, Halmo contends the County has impermissibly merged the GMA's Type I (infill of existing area) and Type III (isolated small-scale business) LAMIRDs by provisions creating the Fisherman's Village RNC.³⁰ He argues the new LAMIRD cannot be considered "small-scale" when its allowance required an exception to the 5-acre LAMIRD maximum already in the Gig Harbor Peninsula Community Plan policies for three previously-identified LAMIRDs.

Intervenor Howe's argument hinges on three assertions: first, that the requirement to identify a logical outer boundary delineated by the "built environment" applies to an existing

²⁸ RCW 36.70A.320(3).

²⁹ Petitioner's Prehearing Brief, at 12-14.

³⁰ Petitioner's Prehearing Brief, at 10-11.

1 “area” of more intensive rural development and not to an existing “use;” second, that
2 approval of the plat permit for Gateway Point brought a commercial “use” into existence on
3 the property regardless of when components of the project were built; and third, that the
4 logical outer boundary of the LAMIRD may be determined by the built environment
5 surrounding the LAMIRD rather than within it.

6
7 Howe contends the commercial use of Fisherman’s Village was in existence at
8 Gateway Point in 1990 because the project was not merely vested but development
9 approvals had been issued.³¹ Given the “existing” use of Gateway Point and the previously-
10 built Howe commercial buildings, Howe asserts only three small parcels of the area remain
11 for infill as a Type I LAMIRD. Howe argues there is no risk of low-density sprawl because
12 neighboring properties are already developed with residential uses that will minimize and
13 contain the LAMIRD.

14
15 Howe asserts Fisherman’s Village meets both Type I and Type III LAMIRD criteria.³²
16 Howe argues the area is “isolated” because it is bounded by SR-16 on one side and
17 residential uses on three sides, thus “containing” the more intensive commercial
18 development.³³

19 20 **Board Discussion and Analysis**

21 The Board’s review of county LAMIRD designations is guided by recent court rulings
22 which require the LAMIRD provisions of RCW 36.70A.070(5)(d) to be narrowly construed.
23 In *Kittitas County v. Kittitas County Conservation Coalition*, 176 Wn. App. 38, 308 P.3d 745
24 (2013), the Court ruled the Board properly invalidated the county’s expansion of a Type III
25 LAMIRD which was neither isolated nor small-scale as required by RCW 36.70A.070(5)
26 (d)(iii). The Court explained:³⁴

27
28 A comprehensive plan amendment must “conform to the [GMA].” RCW
29 36.70A.130(1)(d). But “the GMA is not to be liberally construed.” *Woods v.*
30 *Kittitas County*, 162 Wn.2d 597, 612 & n.8, 614, 174 P.3d 25 (2007). Thus a

31 Intervenor’s Response, at 22.

32 Intervenor’s Response, at 19, 22.

33 *Id.*

34 176 Wn. App. at 56; see also *Spokane County v. E. Wash. Growth Mgmt. Hearings Bd.*, 176 Wn. App. 555,
576, 309 P.3d 673 (2013) (affirming Board’s invalidation of County’s expansion of Type I LAMIRD).

comprehensive plan must obey the GMA's clear mandates. See *Thurston County v. W. Wash. Growth Mgmt. Hr'gs Bd.*, 164 Wn.2d 329, 341-42, 190 P.3d 38 (2008).

A LAMIRD is an optional planning tool, which, if used, must comply with the GMA's provisions.³⁵ These are "mandatory criteria," according to the Supreme Court,³⁶ which must be included in comprehensive plan policies and applied in the analysis of individual LAMIRD designations.

The Board therefore must determine whether Pierce County's designation of Fisherman's Village meets the statutory criteria for a Type I and/or Type III LAMIRD and whether a logical outer boundary has been drawn.

Is Fisherman's Village a Type I LAMIRD?

A Type I LAMIRD recognizes an area of more intensive development that existed in the rural area as of July 1990 and allows continuation and infill of the area. The courts have explained: LAMIRDs "allow continuation of greater densities than are usually permitted in rural areas," but "the densities must be confined to the clearly identifiable area of more intensive development existing as of July 1990."³⁷ Under the LAMIRD provisions, a county may allow more intensive rural development in "limited areas." Type I LAMIRDs recognize "existing" intensively-developed commercial or residential areas and allow limited infill or redevelopment so long as it is minimized and contained within "logical outer boundaries" (LOBs). As applied to Pierce County, the GMA specifies: "An existing area or existing use is one that was in existence on July 1, 1990." RCW 36.70A.070(5)(d)(v)(A).

In *Gold Star v. Whatcom County*, the court of appeals found Whatcom County's LAMIRD provisions noncompliant because "none limits the LAMIRD areas to development existing as of July 1990" and the provisions "do not exclude development built or vested after 1990."³⁸ The court concluded: "The absence of the pre-1990 date restrictions renders

³⁵ *Gold Star v. Whatcom County*, 140 Wn. App. 378, 383, 166 P.3d 748 (2007), *aff'd* in part, *rev'd* in part *Gold Star v. Whatcom County*, 167 Wn.2d 723, 222 P.3d 791 (2009).

³⁶ *Gold Star v. Whatcom County*, 167 Wn.2d at 798.

³⁷ *Gold Star v. Whatcom County*, 140 Wn. App. at 391-92.

³⁸ *Id.* at 394-95.

1 the provisions facially inconsistent with the GMA.”³⁹ The Supreme Court affirmed, saying
2 LAMIRDs are “intended to be a one-time recognition of existing areas and uses.”⁴⁰
3 However the Supreme Court “specifically disavowed” the Court of Appeals comment “that
4 development existing as of 1990 includes vested development rights.”⁴¹

5 Pierce County’s record demonstrates the Fisherman’s Village area in 1990 had
6 commercial buildings on only two parcels, the Howe Investment properties on Parcels
7 0221282015 and 0221282028.⁴² However, Howe asserts the Gateway Point use of an
8 additional 9 acres existed in 1990 by virtue of the 1989 site plan approval. Howe bases its
9 argument on a sentence in RCW 36.70A.070(5)(d)(iv) which states: “Existing areas” must
10 be identifiable and contained and have a “logical boundary delineated predominantly by the
11 built environment.” Because the sentence addresses “existing areas” rather than “existing
12 areas or uses,” Howe contends, the 1990 built environment requirement only applies to an
13 area and does not limit the County’s consideration of 1990 existing uses. Howe then
14 asserts the Gateway Point business park use existed as of July 1, 1990, inasmuch as the
15 site plan had been formally approved for commercial development. Howe provides no
16 authority for the argument that a use comes into existence with site plan approval, and the
17 Board has found none.

18 Without dispute, the only structures in the 16-acre Fisherman’s Village area on July
19 1, 1990, were a vacant residence on Parcel # 0221282010, the two Howe commercial
20 buildings on Parcel # 0221282015, and the Howe office building on Parcel # 0221282028.
21 The remaining 13 acres were unbuilt. Thus, on the ground, in 1990 only the Howe
22 commercial buildings on two acres of the Fisherman’s Village site could be characterized
23 as a more-intensively developed rural area. To allow LAMIRD designation of a larger area
24 on these facts, Pierce County amended its comprehensive plan RNC criteria to provide:

25 PCC 19A.30.060 B.4. Recognize isolated areas of commercial/business
26 park development which were approved or had existing uses or areas of
27 higher intensity use on or before July 1, 1990.

31 ³⁹ *Id.*

32 ⁴⁰ *Gold Star v. Whatcom County*, 167 Wn.2d at 727.

⁴¹ *Id.* at 739.

⁴² PCC # 14, Staff Report, p. 18.

1 Petitioner Halmo objects to the addition of the “were approved” and “on or before”
2 language. Intervenor Howe responds that the requirement for a 1990 built environment only
3 applies to the area and not to the uses, which come into existence when site plan approval
4 is issued.

5 Looking first at the “on or before” phrase, the Board notes it has previously ruled that
6 prior uses with no remaining structures would not qualify an area as a LAMIRD:
7

8 The phrase “the uses that existed in the area prior to or as of July 1, 1990”
9 in describing the reference point for allowed and conditional uses is not
10 consistent with RCW 36.70A.070(5)(d)(v). . . . The Legislature in selecting
11 July 1, 1990 used a definite point in time to use as a reference point for
12 counties in defining the extent of a LAMIRD. . . . The phrase “prior to or as
13 of July 1, 1990” would allow consideration of past uses that were not only
14 not in operation on July 1, 1990, but of which there was no remaining
15 evidence. Under the County’s current phrasing, a commercial use that was
16 in existence prior to July 1, 1990 but which subsequently was removed or
17 destroyed leaving no remaining “built environment” would still qualify the
18 area as a LAMIRD.⁴³

19 In the *Dry Creek* case, the Board found the “prior to or as of July 1990” language clearly
20 erroneous. Halmo has met his burden of proof on this question. However, the Fisherman’s
21 Village LAMIRD is not based on pre-1990 commercial uses without remaining structures.
22 Rather, for Fisherman’s Village, the operative County amendment is the provision that
23 recognizes a LAMIRD where proposed uses were approved on July 1, 1990.

24 As previously noted, the *Gold Star* Supreme Court “specifically disavow[ed]” the
25 Court of Appeals suggestion that development existing as of 1990 includes vested
26 development rights.⁴⁴ This upholds the Board’s analysis in the *Dry Creek* case:

27 [W]hen establishing a LAMIRD the County must FIRST identify the built
28 environment, as of July 1, 1990, so that it may be minimized and contained
29 as required under the GMA. In determining the built environment, the Board
30 has stated:

31 Vested rights do not equate to the built environment.

32 The built environment includes those facilities that are manmade,
whether they are above or below ground.

⁴³ *Dry Creek Coalition/Futurewise v. Clallam County*, WWBMHB Case No.07-2-0018c, Order on Compliance
(Jan. 30, 2009), at 10-11

⁴⁴ *Gold Star v. Whatcom County*, 167 Wn.2d at 739.

1 Subdivided or platted land, although occurring prior to 1990, which
2 remains undeveloped [in 1990] may not be considered part of the built
3 environment as the Legislature intended this term to relate to manmade
4 structures.⁴⁵

5 WAC 365-196-425(6)(i)(C)(II) refers to "construction that defines the built
6 environment" and explains "the built environment does not include patterns of vesting or
7 preexisting zoning . . . if no physical improvements are in place." Vested lots and post-1990
8 structures "should not be considered when identifying the built environment."

9 The Board finds here that although Gateway Point's 9-acre site plan was approved
10 and its post-1990 development was lawful under prior zoning, only the two-acre Howe
11 commercial buildings constituted a "more intensive rural development" – whether
12 considered as use or area – in 1990. Gateway Point's first building permit was not
13 submitted until 1991 and the first building completed in 1992. As the Board has pointed out:

14 Vested projects can be built, but the property cannot be designated as a
15 LAMIRD if it does not meet the criterion of containing built environment as of
16 July 1, 1990.⁴⁶

17 The Board has recognized this statutory restriction is problematic where intensive
18 rural development patterns under prior zoning persisted or were built out between 1990
19 and 1997, as in Fisherman's Village:
20
21

22 The Legislature set a firm date by which facilities and structures must have
23 been constructed in order to qualify as part of the built environment of a
24 LAMIRD. For Thurston County, that date is July 1, 1990. The fact that the
25 intervening development was lawful under the County's comprehensive plan
26 does not alter that date. Further, the legislative intent was undoubtedly not
27 to count such later development since the LAMIRD provisions of the GMA

28 ⁴⁵ *Dry Creek Coalition/Futurewise v. Clallam County*, WWGMHB Case No. 07-2-0018c, Final Decision and
29 Order (April 23, 2008) at 30-31, citing *Durland v. San Juan County*, WWGMHB Case No. 00-2-0062c, Final
30 Decision and Order (May 7, 2001), "[T]he 'built environment' only includes those facilities which are
31 'manmade,' whether they are above or below ground. To comply with [the GMA] the area included within the
32 LOB must have manmade structures in place [built] on July 1, 1990;" *Better Brinnon Coalition v. Jefferson
County*, WWGMHB Case No. 03-2-0007, Amended Final Decision and Order (Nov. 3, 2007), at 18, "The test
for a type (d)(i) LAMIRD is . . . whether there was a built environment on July 1, 1990 and what the logical
outer limits of that built environment should be for the purposes of containment."

⁴⁶ *City of Anacortes v. Skagit County*, WWGMHB Case No. 00-2-0049c, Compliance Order (C/I Development
Issues) (Jan. 31, 2002), at 20.

1 were themselves not effective until 1997. In adopting the LAMIRD
2 amendments in 1996, the *Legislature expressly excluded from consideration*
3 *as part of the historic built environment any more intensive rural*
4 *development that had occurred between 1990 and 1997.* There is no basis
5 for assuming that the Legislature did not mean what it said when it set the
6 date of July 1990. Nor is there any authority in the Board to alter a
7 requirement imposed by the Legislature.⁴⁷

8 Division II Court of Appeals recently ruled that the fact development was valid at the
9 time the developers' rights vested in a UGA expansion area did not absolve the county of
10 its duty to comply with GMA planning goals when the UGA was subsequently invalidated.
11 Vested rights provide certainty to landowners and developers, according to the Court, but
12 the vested rights doctrine does not "insulate[] the County from responsibility for its own
13 shortcomings in the planning process." *Kathy Miotke v. Spokane County*, --- Wn. App. ---,
14 325 P.3d 434, 440 (May 20, 2014). Similarly here, the fact that post-1990 Gateway Point
15 commercial buildings were lawful when built does not allow the County or the Board to
16 ignore the July 1, 1990 cut-off date for a LAMIRD "existing area or existing use." Pierce
17 County's text amendment encompassing areas which "were approved" in 1990 is clearly
18 erroneous.

19 **The Board finds** Fisherman's Village contained only two acres of more intensive
20 rural development in 1990 upon which the County could base LAMIRD designation. **The**
21 **Board finds** the portion of Amendment T-2 allowing recognition as RNC for isolated areas
22 of commercial/business park development which were approved or had existing uses or
23 areas of higher intensity use on or before July 1, 1990" **does not comply** with the Type I
24 LAMIRD criteria of RCW 36.70A.070(5)(d)(i), (iv) and (v)(A). **The Board remands**
25 Ordinance No. 2013-59, Amendment T-2, PCC 19A.30.060 B.4 changing location criteria
26 for Rural Neighborhood Centers, to the County for legislative action to bring its LAMIRD
27 criteria into compliance with the GMA as set forth above.
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32 ⁴⁷ *1000 Friends of Washington v. Thurston County*, WWGMHB Case No.05-2-0002, Compliance Order –
LAMIRDS and Lot Aggregation (Nov. 30, 2007), at 11-12 (emphasis added).

1 Is Fisherman's Village a Type III LAMIRD?

2 Intervenor Howe asserts Fisherman's Village also qualifies as a Type III LAMIRD.⁴⁸
3 Designation of a Type III LAMIRD allows "[t]he intensification of development on lots
4 containing isolated nonresidential uses . . . and isolated small-scale businesses that are not
5 principally designed to serve the existing and projected rural population and nonresidential
6 uses. . . ." Pierce County's amended plans refer to Fisherman's Village as an "isolated area
7 of commercial business park development." Amendment T-2, 19A.30.060 B.4,
8 19A.30.40.060 Objective 6.G.5 and I.2; C-2, Objective 6, and Objective 6, Principle 3.
9

10 The Board notes Pierce County's comprehensive plan contains no specific provisions
11 for Type III LAMIRDs. The Board agrees with Howe that a county is not required to
12 designate Type II or Type III LAMIRDs. WAC 365-196-425(6)(c)(iii)(B) provides:

13 (B) Counties are not required to designate Type 3 LAMIRDs on the
14 future land use map and may allow them as a conditional use. If using a
15 conditional use process, counties should include in their development
16 regulations conditions that address all the statutory criteria for the location of
17 a Type 3 LAMIRD. Conditions must assure that Type 3 LAMIRDs:

18 (I) Are isolated, both from urban areas and from each other. Conditions
19 should include spacing criteria to avoid creating a pattern of strip
20 development;

21 (II) Are small in scale;

22 (III) Are consistent with rural character. . . .

23 Thus, should the county choose to designate an isolated commercial use as a Type III
24 LAMIRD, the designation must comply with statutory criteria.⁴⁹

25 Pierce County's RNC provisions are specific: Rural Neighborhood Centers "serve
26 the everyday needs of local rural residents." PCC 19A.30.060(B) Objective 13. Type III
27 LAMIRDs by definition "are not principally designed to serve the existing and projected
28 rural population." RCW 36.70A.070(5)(d)(iii). Pierce County's staff report stated that the
29 development at Fisherman's Village "would serve a wider urban and rural population which
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32 ⁴⁸ Intervenor's Response, p. 22.

⁴⁹ *Kittitas County v. Kittitas County Conservation Coalition*, 176 Wn. App. 38, 308 P.3d 745 (2013) (The Court ruled the Board properly invalidated the county's expansion of a Type III LAMIRD which was neither isolated nor small-scale as required by RCW 36.70A.070(5)(d)(iii).)

1 has access to the site by an interchange on SR-16” and is “not principally designed to
2 serve the existing and projected rural population.”⁵⁰ Howe argues a Type III LAMIRD may
3 also be a Type I LAMIRD, but based on the staff report, Fisherman’s Village apparently
4 fails to meet a key criteria for Type I and, indeed, for any of Pierce County’s Rural
5 Neighborhood Centers under Objective 13: it is not intended to serve local rural population.
6 Amendments T-2 and C-2 do not resolve this discrepancy. However this issue was not
7 raised by Petitioner Halmo, who bears the burden of proof. Therefore the Board does not
8 rule on the population service criterion.
9

10 Is Fisherman’s Village isolated? Intervenor Howe contends the existing development
11 on all four sides of the property eliminates the risk of commercial creep. Howe states
12 Fisherman’s Village is framed by a multi-family development to the north, residential
13 subdivisions to the west, a 40-year-old mobile home park to the south, and a highway to
14 the east. In Howe’s view, the commercial area is thus “isolated” and will not generate urban
15 sprawl.⁵¹
16

17 The Board notes the “isolated” analysis generally involves distance from the UGA or
18 from other commercial development. One purpose is to avoid bleeding off shopping and
19 office uses that should be in-filling the urban area.⁵² A related goal is avoidance of strip
20 development.⁵³ The Commerce Guidelines provide Type III provisions “must assure that
21 Type III LAMIRDs are isolated, both from urban areas and from each other.” WAC 365-
22 196-425(6)(c)(iii)(B)(I). Pierce County’s Rural Neighborhood Center locational criteria
23 contain required minimum distances from UGA boundaries and from other LAMIRDs, as
24
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27 ⁵⁰ PCC # 14, Staff Report, p. 17.

⁵¹ Intervenor’s Response at 22-23.

28 ⁵² *Burrow v. Kitsap County*, CPSGMHB Case No. 99-3-0018, Order on Compliance in a Portion of *Alpine* and
29 Final Decision and Order in *Burrow* (March 29, 2000), at 18-: a “bedrock principle” of the GMA is “to direct
30 urban development into urban growth areas . . . While the 1997 rural amendments make accommodation for
31 ‘infill, development or redevelopment’ of ‘existing’ areas of ‘more intensive rural development,’ such a pattern
32 of such growth must be ‘minimized and contained.’”

⁵³ *Hensley v. Snohomish County (Hensley VI)*, CPSGMHB Case No. 03-3-0009c, Final Decision and Order
(Sep. 22, 2003) at 47; 9-acre commercial strip along freeway is not isolated. See also, *Hensley v. Snohomish
County (Hensley IV)*, CPSGMHB Case No. 00-3-0004c, Final Decision and Order (Aug. 15, 2001) at 14-15;
County delineation of LAMIRD as a commercial strip connecting existing nodes at two intersections along SR
9 by including 29 acres of infill does not comply with GMA Type I LAMIRD criteria.

1 well as a provision to discourage commercial development in continuous strips. PCC
2 19A.40.060 G.3, 4 and I.

3 In its ruling on Pierce County's 1995 plan, the Board found the Gig Harbor South
4 Rural Activity Center designation non-compliant because it was "adjacent to" the Gig
5 Harbor UGA to the north, saying: "These RACs cannot usurp the community center
6 functions of incorporated areas located so nearby."⁵⁴

7
8 The Legislature's use of the term "isolated" for both cottage industry and
9 small-scale businesses in RCW 36.70A.070(5)(d)(iii) demonstrates an
10 unambiguous intention to ensure that any commercial uses established by
11 the mechanism of a type (d)(iii) LAMIRD be set apart from other such
12 uses.⁵⁵

13 Petitioner Halmo argues "the location of the proposed RNC is far from being an
14 isolated location where small-scale business could be created without creating pressure for
15 urbanization."⁵⁶ Halmo noted in written testimony before the County Council that the staff
16 report "does not state the actual distance from the proposed RNC and the closest Urban
17 Growth Area boundary."⁵⁷ Pierce County's RNC location criteria provide that new RNCs
18 should be located no closer than two miles from any UGA boundary. PCC 19A.40.060 G.4.
19 However, though raising the issue, Halmo failed to put into the record evidence of the
20 actual or estimated distance as necessary to overcome the presumption of validity. Merely
21 questioning the County's action does not shift the burden of proof, and thus the Board must
22 defer to the County on the "isolated" criterion.

23
24 Is Fisherman's Village small-scale? Intervenor Howe asserts the 16.5-acre
25 commercial area is small-scale, arguing only 5 acres remain to be developed.⁵⁸ The Board
26 notes Pierce County's RNC provisions state rural neighborhood centers "should be limited
27 to no more than ten acres in size," unless otherwise designated in community plans
28

29
30 ⁵⁴ *City of Gig Harbor v. Pierce County*, CPSGMHB Case No. 95-3-0016, Final Decision and Order (Oct. 31,
1995), p. 52, identifying Gig Harbor South RAC as area along 36th St. NW, west of SR-16.

31 ⁵⁵ *Better Brinnon Coalition v. Jefferson County*, WWGMHB Case No. 03-2-0007, Compliance Order (June 23,
32 2004), at 11-12

⁵⁶ Petitioner's Prehearing Brief, at 11.

⁵⁷ PCC # 15, p. 3.

⁵⁸ Intervenor's Response, p. 23.

1 prepared or updated after January 1, 1998, or as “determined in a community plan by
2 Comprehensive Plan amendment.” PCC 19A.40.060 (Objective 6), I. The Gig Harbor
3 Community Plan Principle 1, Standard 6.1.2 states: “Under no circumstances shall a RNC
4 exceed five acres in size.” With Amendment C-2, however, allowance was made for
5 Fisherman’s Village which was differentiated from the three prior Gig Harbor Peninsula
6 RNCs.
7

8 Reading these provisions in context, the Board finds Pierce County may in its
9 discretion designate a LAMIRD larger than five acres in Gig Harbor or larger than ten acres
10 in any rural area of the county, but to claim such a LAMIRD is “small-scale” is not
11 consistent with the comprehensive plan or community plan provisions. Fisherman’s Village
12 is three times as large as the maximum for Gig Harbor Peninsula’s other RNCs and 50%
13 larger than the county-wide RNC maximum. Thus by Pierce County’s RNC standards,
14 Fisherman’s Village is not small-scale.
15

16 The Board finds Fisherman’s Village does not meet the statutory criteria for a Type
17 III LAMIRD as it is not small in scale as established by Pierce County’s RNC standards.
18 The County’s designation of Fisherman’s Village therefore must comply with the Type I
19 criteria of RCW 36.70A.070(5)(d)(i), (iv), and (v).
20

21 *Is the Fisherman’s Village LAMIRD contained by a Logical Outer Boundary?*
22

23 Petitioner Halmo contends map amendment M-6 violates GMA LAMIRD provisions
24 because the 16-acre area of Fisherman’s Village is not based on a logical outer boundary
25 as required by RCW 36.70A.070(5)(d)(iv). Halmo argues rather than “minimizing and
26 containing” 1990 commercial development, the map sanctions “outfill,” pointing out that
27 virtually all of Fisherman’s Village is outside the original 2-acre 1990 commercial
28 development.⁵⁹

29 Intervenor Howe correctly asserts there is a two-step process in establishing a Type
30 I LAMIRD – “first, identification of the built environment of the area of more intensive rural
31 development in place in 1990; and second, the drawing of the logical outer boundaries
32

⁵⁹ Petitioner’s Prehearing Brief, at 8.

1 around the built environment, considering statutory factors other than the built environment
2 itself.”⁶⁰ Howe contends the logical boundary for Fisherman’s Village commercial area is
3 established by the pre-1990 built-out residential uses on three sides and SR-16 on the
4 fourth. Because of this exterior built environment, according to Howe, additional
5 commercial development in the LAMIRD is limited to infill of about 5 acres, with no
6 likelihood of commercial creep or low-density sprawl.
7

8 The Board has established above that the Howe commercial buildings on just two
9 lots totaling 2 acres were the only built environment in place in 1990, and that this was the
10 limit of “more intensive rural development” which could form a basis for LAMIRD
11 designation. Generally, when the boundary of a LAMIRD is challenged, the 1990 structures
12 and supporting improvements themselves provide the logical outer boundary. When “outfill”
13 is proposed on the periphery, the Board generally looks for a road or a topographical
14 feature, steep slope, dedicated green belt, or body of water to provide a boundary. RCW
15 36.70A.070(5)(d)(iv) provides:
16

17 In establishing the logical outer boundary, the county shall address (A) the
18 need to preserve the character of existing natural neighborhoods and
19 communities, (B) physical boundaries, such as bodies of water, streets and
20 highways, and land forms and contours, (C) the prevention of abnormally
21 irregular boundaries, and (D) the ability to provide public facilities and public
22 services in a manner that does not permit low-density sprawl.

23 Within a logical outer boundary, Type I LAMIRDS specifically allow “infill,
24 development or redevelopment of existing areas.” RCW 36.70A.070(5)(d)(i).

25 “Infill” is specifically contemplated in the statute so that the mere addition of
26 some lots through infill does not necessarily violate the restrictions of RCW
27 36.70A.070(5)(d)(i) and (iv). However, “outfill” or the inclusion of larger
28 tracts of land on the periphery of the built environment is of major concern
29 as adding to, rather than minimizing and containing, more intensive rural
30 development.⁶¹

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32 ⁶⁰ Intervenor’s Response at 20, citing *1000 Friends of Washington v. Thurston County*, WWGMHB Case No.
05-2-0002, Compliance Order (Nov. 30, 2007), at 12.

⁶¹ *1000 Friends of Washington v. Thurston County*, WWGMHB Case No.05-2-0002, Compliance Order –
LAMIRDS and Lot Aggregation (Nov. 30, 2007), at 18.

1 WAC 365-196-425(6)(c)(i)(C)(II) provides: “. . . Although vested lots and structures
2 built after the county became subject to the act’s requirements should not be considered
3 when identifying the built environment, they may be included within the logical outer
4 boundary as infill” (emphasis added). Thus if there is a logical outer boundary for
5 Fisherman’s Village, Commerce guidelines would allow Gateway Point to be included as
6 infill.
7

8 Under the unique local circumstances here, the Board finds the Fisherman’s Village
9 site is contained on west and south sides by residential lands already built out at pre-GMA
10 suburban densities and on the east side by SR-16. This creates a logical outer boundary
11 which “preserves the character of existing natural neighborhoods and communities” on the
12 south and incorporates the physical boundaries provided by streets and highways on the
13 east and west, as expressed in RCW 36.70A.070(5)(d)(iv)(A and B). Gateway Point is
14 “included within the logical outer boundary as infill” in accordance with WAC 365-196-
15 425(6)(c)(i)(C)(II).
16

17 Between Gateway Point and the Howe commercial buildings, two vacant parcels
18 can be characterized as infill – Parcels # 0221282017 and # 0221282029. However,
19 inclusion of the residential property within an LOB to the north represents “outfill.” The
20 Board has pointed out that “outfill” or “the inclusion of larger tracts of land on the periphery
21 of the built environment is of major concern as adding to, rather than minimizing and
22 containing, more intensive rural development.”⁶² In *Futurewise v. Whatcom County*, the
23 Board rejected a two-acre extension of an LOB based on a one-time structure on an
24 adjacent parcel, finding, “the existence of one small building in 1990 does not equate to a
25 two-acre addition of “more intense rural development.” ⁶³ Here the structure on Parcel #
26 0221282010 is residential, not logically linked to the more intensive commercial
27 development of the 1990 Howe properties. Thus, as Halmo’s comments before the County
28 Council pointed out, the presence of a residential structure on Parcel # 0221282010
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32 ⁶² *1000 Friends of Washington v. Thurston County*, WWGMHB Case No.05-2-0002, Compliance Order –
LAMIRDS and Lot Aggregation (Nov. 30, 2007), at 18.

⁶³ *Futurewise v. Whatcom County (Governors’ Point)*, Case Nos. 11-2-0010c and 05-2-0013, Compliance
Order and Order Following Remand on Issue of LAMIRDS (Jan. 4, 2013), at 77-78.

1 provides no basis for extending the LAMIRD commercial development north of the Howe
2 buildings as far as the townhomes.⁶⁴

3 The record here presents no road or topographical feature, steep slope, dedicated
4 green belt, or body of water to provide a logical outer boundary north of the Howe 1990
5 improvements. The fact that the residential parcel # 0221282010 is underdeveloped by
6 LAMIRD standards is not enough to bring it within the LOB. The Board finds Map
7 Amendment M-6 fails to establish a logical outer boundary north of the 1990 structures and
8 is clearly erroneous in light of the GMA LAMIRD requirements.
9

10 **The Board finds** the LOB adopted in Map Amendment M-6 fails to minimize and
11 contain the more intensive commercial development in Fisherman's Village. On this record,
12 Petitioner Halmo has carried his burden of demonstrating the Fisherman's Village LAMIRD
13 lacks a logical outer boundary on the north that complies with RCW 36.70A.070(5)(d)(iv).
14 The Board is left with a firm and definite conviction that a mistake has been made. Map
15 Amendment M-6 is **remanded** to Pierce County to take legislative action to comply with the
16 GMA as set forth above.
17

18 **B. Comprehensive Review of LAMIRDs**

19 The prehearing order sets forth Legal Issue 1 as follows:

- 20
- 21 1. Did Pierce County fail to comply with RCW 36.70A.070(5), RCW
22 36.70A.020(2), and Pierce County Comprehensive Plan 19A.110.030D by
23 amending its Comprehensive Plan without conducting a comprehensive
24 review of Limited Areas of More Intense Rural Development (LAMIRDs) in
25 the Gig Harbor Peninsula Community Plan area when adopting the following
26 amendments in Ordinance No. 2013-59: [T-2, C-2, and M-6]?
27

28 **Applicable Law**

29 GMA Planning Goal 2 – Reduce Sprawl – and the LAMIRD provisions of RCW
30 36.70A.070(5)(d) are set out in full at the beginning of discussion of Legal Issue 2 above.
31 Also relevant to this issue is RCW 36.70A.130(1), which frames the requirement for
32 amending comprehensive plans to take into account new legislative provisions:

⁶⁴ PCC # 15, p. 3

1 (1)(a) Each comprehensive land use plan and development regulations shall
2 be subject to continuing review and evaluation by the county or city that
3 adopted them. Except as otherwise provided, a county or city shall take
4 legislative action to review and, if needed, revise its comprehensive land
5 use plan and development regulations to ensure the plan and regulations
6 comply with the requirements of this chapter according to the deadlines in
7 subsections (4) and (5) of this section.

8 (d) Any amendment of or revision to a comprehensive land use plan shall
9 conform to this chapter. Any amendment of or revision to development
10 regulations shall be consistent with and implement the comprehensive plan.

11 **Positions of the Parties**

12 Petitioner Halmo asserts the County was required to conduct a comprehensive
13 review of the Gig Harbor Peninsula Community Plan area to determine whether LAMIRDs
14 have been properly designated pursuant to the 1997 GMA amendments.⁶⁵ Halmo contends
15 Pierce County has never amended its rural centers designations to comply with RCW
16 36.70A.070(5)(d). During the comprehensive plan update of 2005, the County decided to
17 review LAMIRDs as community plans were initiated or updated. PCC 19A.110.030 D.
18 Halmo argues the amendments to the Gig Harbor Peninsula Community Plan adopted with
19 Amendment C-2 trigger the requirement of a comprehensive review of LAMIRD
20 designations in the Gig Harbor Peninsula Community Plan area.

21 Intervenor Howe responds that Amendment C-2 is a mere property-owner docketing
22 request, not a community plan update, and does not reopen the whole Gig Harbor
23 Peninsula Community Plan.⁶⁶

24 **Board Discussion and Analysis**

25 The Supreme Court in *Gold Star* definitively ruled that post-1997 review and revision
26 of a county comprehensive plan under RCW 36.70A.130 requires a county to
27 (a) “incorporate the relevant LAMIRD criteria into its comprehensive plan” and (b) “use
28 them to delineate areas of more intensive rural development.”⁶⁷ The second step involves
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32

⁶⁵ Petitioner’s Prehearing Brief, at 4-7.

⁶⁶ Intervenor’s Response, at 16.

1 “consider[ing] the statutory criteria when defining its designations for more intensely
2 developed rural areas and . . . analyz[ing] the logical outer boundaries of the areas under
3 RCW 36.70A.070(5)(d).”⁶⁸

4 Pierce County in its 2005 plan update deferred comprehensive review of its rural
5 centers designations and LOBs, determining to conduct the LAMIRD evaluation at the
6 community plan scale.⁶⁹ The County adopted PCC 19A.110.030 D which provides:

8 Upon initiation or update of a community plan in the rural area of the
9 County, all rural centers shall be evaluated and updated as necessary to be
10 consistent with Growth Management Act provisions in RCW 36.70A.070(5)
11 for Limited Areas of More Intensive Rural Development (LAMIRDs).

12 Halmo contends the C-2 amendments inserting Fisherman’s Village as a new
13 LAMIRD constituted an update of the Gig Harbor Peninsula Community Plan which should
14 have triggered thorough review of LAMIRD designations within the community plan area.
15 Halmo’s concerns found support in a first comment letter to Pierce County from Commerce
16 planner Anthony Boscolo.⁷⁰ Boscolo cautioned that designation of Fisherman’s Village
17 must meet GMA LAMIRD requirements, in particular, (1) the County must show how “this
18 geographic area met the definition of existing [on July 1, 1990];” (2) the logic used to
19 establish the outer boundaries must be clear; and (3) the County should conduct a
20 comprehensive review of LAMIRDs within the Gig Harbor community plan area. However,
21 a correction letter issued a few days later stated: “Typically, a comprehensive review would
22 be conducted in association with a county’s periodic update and would be separate from
23 annual amendments such as the Fisherman’s Village proposal.”⁷¹

25 The Board notes the staff report acknowledges: “Rural Centers in the Gig Harbor
26 Community Plan have not been evaluated by the LAMIRD criteria.”⁷² The issue put before
27 the Board by the petitioner here is a narrow question of whether Amendment C-2 triggers
28 comprehensive review of LAMIRDs within the Gig Harbor Peninsula Community Plan area
29

30 ⁶⁷ *Gold Star*, 167 Wn.2d at 737.

31 ⁶⁸ *Id.* at 736.

32 ⁶⁹ PCC # 5, Staff Report, p. 15.

⁷⁰ PCC # 10, Correspondence from Anthony Boscolo, Senior Planner, Department of Commerce, Oct. 2, 2013.

⁷¹ PCC # 8, Correspondence from Anthony Boscolo, Senior Planner, Department of Commerce, Oct. 8, 2013.

⁷² PCC # 14, p. 19.

1 – not the broader issue of the County’s apparent failure to revise LAMIRD designations in
2 the periodic update required under RCW 36.70A.130. The Board finds Pierce County has
3 specific procedures for initiation and update of community plans that are distinct from the
4 annual docketing cycle.⁷³ Amendment C-2 was not an update of the Gig Harbor Peninsula
5 Community Plan within the meaning of PCC 19A.110.030 D. County policies thus did not
6 mandate comprehensive review of LAMIRD designations within the sub-area.⁷⁴
7

8 **The Board finds** Halmo has failed to carry his burden of demonstrating Amendment
9 C-2, incorporating the Fisherman’s Village LAMIRD into the Gig Harbor Peninsula
10 Community Plan, violated PCC 19A.110.030 D, RCW 36.70A.070(5)(d) or RCW 36.70A.020
11 (2). Legal Issue 1 is **dismissed**.
12

13 VI. ORDER

14 Based upon review of the Petition for Review, the briefs and exhibits submitted by
15 the parties, the GMA, prior Board orders and case law, having considered the arguments of
16 the parties, and having deliberated on the matter, the Board orders:
17

18 • Ordinance No. 2013-59, Amendments T-2 [PCC 19A.30.060 B.4] and M-6
19 [north LOB] fail to comply with RCW 36.70A.070(5)(d) and are clearly erroneous in view of
20 the entire record before the Board and in light of the goals and requirements of the GMA.
21 The Board remands the Ordinance to the County to bring it into compliance with the GMA
22 as set forth in this Order.

- 23 • All other allegations of Petitioner are dismissed.
24 • The Board sets the following schedule for the County’s compliance [120 days].
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26
27
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31

32 ⁷³ Intervenors’ Ex. 8, PCC Chapter 19C.20, *Procedures for Developing Community Plans and Updates to Community Plans*.

⁷⁴ The Board does not opine on whether ad hoc LAMIRD designations during the annual docketing cycle might be found non-compliant under another argument.

Item	Date Due
Compliance Due on identified area of noncompliance	November 20, 2014
Compliance Report/Statement of Actions Taken to Comply and Index to Compliance Record	December 4, 2014
Objections to a Finding of Compliance	December 18, 2014
Response to Objections	December 29, 2014
Compliance Hearing (Telephonic) Call 1-800-704-9804 and use pin 4364567#	January 9, 2015 10:00 a.m.

SO ORDERED this 23rd day of July 2014.

Margaret Pageler, Board Member

Cheryl Pflug, Board Member

Nina Carter, Board Member

Note: This is a final decision and order of the Growth Management Hearings Board issued pursuant to RCW 36.70A.300.⁷⁵

⁷⁵ Should you choose to do so, a motion for reconsideration must be filed with the Board and served on all parties within ten days of mailing of the final order. WAC 242-03-830(1), WAC 242-03-840. A party aggrieved by a final decision of the Board may appeal the decision to Superior Court within thirty days as provided in RCW 34.05.514 or 36.01.050. See RCW 36.70A.300(5) and WAC 242-03-970. It is incumbent upon the parties to review all applicable statutes and rules. The staff of the Growth Management Hearings Board is not authorized to provide legal advice.

Commerce Guidelines – LAMIRDS

WAC 365-196-425 (emphasis added)

6) Limited areas of more intense rural development. The act allows counties to plan for isolated pockets of more intense development in the rural area. These are referred to in the act as limited areas of more intense rural development or LAMIRDS.

(a) LAMIRDS serve the following purposes:

(i) To recognize existing areas of more intense rural development and to minimize and contain these areas to prevent low density sprawl;

(ii) To allow for small-scale commercial uses that rely on a rural location;

(iii) To allow for small-scale economic development and employment consistent with rural character; and

(iv) To allow for redevelopment of existing industrial areas within rural areas.

(b) An existing area or existing use is one that was in existence on the date the county became subject to all of the provisions of the act:

(i) For a county initially required to fully plan under the act, on July 1, 1990....

(c) Counties may allow for more intensive uses in a LAMIRD than would otherwise be allowed in rural areas and may allow public facilities and services that are appropriate and necessary to serve LAMIRDS subject to the following requirements:

(i) Type 1 LAMIRDS - Isolated areas of existing more intense development. Within these areas, rural development consists of infill, development, or redevelopment of existing areas. These areas may include a variety of uses including commercial, industrial, residential, or mixed-use areas. These may be also characterized as shoreline development, villages, hamlets, rural activity centers, or crossroads developments.

(A) Development or redevelopment in LAMIRDS may be both allowed and encouraged provided it is consistent with the character of the existing LAMIRD in terms of building size, scale, use, and intensity. Counties may allow new uses of property within a LAMIRD, including development of vacant land.

(B) When establishing a Type I LAMIRD, counties must establish a logical outer boundary. The purpose of the logical outer boundary is to minimize and contain the areas of more intensive rural development to the existing areas. Uses, densities or intensities not normally allowed in a rural area may be allowed inside the logical outer boundary consistent with the existing character of the LAMIRD. Appropriate and necessary levels of public facilities and services not otherwise provided in rural areas may be provided inside the logical outer boundary.

(C) The logical outer boundary must be delineated primarily by the built environment as it existed on the date the county became subject to the planning requirements of the act.

(I) Some vacant land may be included within the logical outer boundary provided it is limited and does not create a significant amount of new development within the LAMIRD.

(II) Construction that defines the built environment may include above or below ground improvements. The built environment does not include patterns of vesting or preexisting zoning, nor does it include roads, clearing, grading, or the inclusion within a sewer or water service area if no physical improvements are in place. Although vested lots and structures

1 built after the county became subject to the act's requirements should not be considered
2 when identifying the built environment, they may be included within the logical outer
3 boundary as infill.

4 (III) The logical outer boundary is not required to strictly follow parcel boundaries. If a
5 large parcel contains an existing structure, a county may include part of the parcel in the
6 LAMIRD boundary without including the entire parcel, to avoid a significant increase in the
7 amount of development allowed within the LAMIRD.

8 (D) The fundamental purpose of the logical outer boundary is to minimize and contain
9 the LAMIRD. Counties should favor the configuration that best minimizes and contains the
10 LAMIRD to the area of existing development as of the date the county became subject to
11 the planning requirements of the act. When evaluating alternative configurations of the
12 logical outer boundary, counties should determine how much new growth will occur at build
13 out and determine if this level of new growth is consistent with rural character and can be
14 accommodated with the appropriate level of public facilities and public services. Counties
15 should use the following criteria to evaluate various configurations when establishing the
16 logical outer boundary:

17 (I) The need to preserve the character of existing natural neighborhoods and
18 communities;

19 (II) Physical boundaries such as bodies of water, streets and highways, and land forms
20 and contours;

21 (III) The prevention of abnormally irregular boundaries; and

22 (IV) The ability to provide public facilities and public services in a manner that does not
23 permit low-density sprawl.

24 (E) Once a logical outer boundary has been adopted, counties may consider changes to
25 the boundary in subsequent amendments. When doing so, the county must use the same
26 criteria used when originally designating the boundary. Counties should avoid adding new
27 undeveloped parcels as infill, especially if doing so would add to the capacity of the
28 LAMIRD.

29 (ii) Type 2 LAMIRDs - Small-scale recreational uses.

30 (iii) Type 3 LAMIRDs - Small-scale businesses and cottage industries. Counties may
31 allow isolated small-scale businesses and cottage industries that are not principally
32 designed to serve the existing and projected rural population and nonresidential uses, but
do provide job opportunities for rural residents, through the intensification of development
on existing lots or on undeveloped sites.

(A) Counties may allow the expansion of small-scale businesses in rural areas as long
as those small-scale businesses are consistent with the rural character of the area as
defined by the county in the rural element. Counties may also allow new small-scale
businesses to use a site previously occupied by an existing business as long as the new
small-scale business conforms to the rural character of the area. Any public services and
public facilities provided to the cottage industry or small-scale business must be limited to
those necessary to serve the isolated nonresidential use and shall be provided in a manner
that does not permit low-density sprawl.

1 (B) Counties are not required to designate Type 3 LAMIRDs on the future land use map
2 and may allow them as a conditional use. If using a conditional use process, counties
3 should include in their development regulations conditions that address all the statutory
4 criteria for the location of a Type 3 LAMIRD. Conditions must assure that Type 3 LAMIRDs:

5 (I) Are isolated, both from urban areas and from each other. Conditions should include
6 spacing criteria to avoid creating a pattern of strip development;

7 (II) Are small in scale;

8 (III) Are consistent with rural character;

9 (IV) Do not include new residential development;

10 (V) Do not require public services and facilities beyond what is available in the rural
11 area; and

12 (VI) Are operationally compatible with surrounding resource-based industries.